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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 10/726,040 | 12/02/2003 | Glenn Butler | LS-004 | 2671 |
| 31647 | 7590 | 01/04/2006 | EXAMINER | |
| DUGAN & DUGAN, P.C. 55 SOUTH BROADWAY TARRYTOWN, NY 10591 | | | JOHNSON III, HENRY M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3739 | |

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,040

Applicant(s)

BUTLER, GLENN

Examiner

Henry M. Johnson, III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-12, 14-20 and 25-29 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>111605</u> . | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments filed 11/10/2005 have been fully considered but they are not persuasive. Claims 16 and 17, previously indicated as allowable, are rejected as Korman et al. teach imaging the treated area to count lesions and record in memory (document) to compare treatments.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1-2, 16-17 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Application Publication US 2002/0173833 to Korman et al. Korman et al. teaches the use of photodynamic therapy in conjunction with hyperbaric oxygen therapy (paragraph 0063), thus making a hyperbaric chamber implicit. The photodynamic therapy unit may include an array of LEDs (Fig. 4) disclosed as operating in the violet/blue range (400-495 nanometers) and may include a focusing lens (Fig. 2a, # 122). The device includes a computer controlled display unit for displaying the imaged illumination treated area, wherein counting is carried out by an operator marking lesions on the display of the illumination treated imaged surface area. Alternatively, the computer lesions counting by image processing techniques to detect and count each lesion in the illumination treated imaged surface area. The score of the computer lesion counting is recorded in a computer memory to enable monitoring the lesion healing

process through a series of consecutive treatments (paragraph 0026). The image also may provide X-Y positional (targeting) information. The camera control is integral with the light controls (paragraph 0120). The method of use is inherent with both devices. The light, to perform photodynamic therapy must be positioned and turned on. Turning on the light inherently selects a wavelength. A hyperbaric chamber by definition must be filled with pressurized gas.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication US 2002/0173833 to Korman et al. in view of U.S. Patent Application Publication US 2004/0068305 to Bansal et al. and further in view of U.S. Patent 5,582,574 to Cramer. Korman et al. are discussed above. Bansal et al. disclose a photodynamic therapy device using LEDs (paragraph 0027) that include patterns of light for providing a targeting mechanism (paragraph 0030) for positioning the light on a target area. The LED's operate at a wavelength of 420 to 500 nanometers (paragraph 0027). This wavelength is disclosed as appropriate for treatment of hyperbilirubinemia (paragraph 0007). A switch is provided that turns the lights on and off and also provides a high and low intensity (paragraph 0026) capability that is interpreted as control and input means (user device). Cramer teaches a hyperbaric incubation chamber with a transparent (Col. 5, line 55) enclosure and a control panel to control the gas pressure and other environmental factors (Col. 7, lines 37-39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the light

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as taught by Bansal et al. with the hyperbaric chamber of Cramer using the teaching of Korman et al. as Bansal et al. suggests using the light for treatment of hyperbilirubinemia and new born babies are frequently afflicted with this condition motivating one to use the light with an infant in an incubator.

Allowable Subject Matter

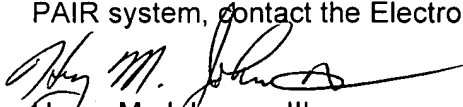
Claims 6-12, 14-20 and 25-29 are allowed.

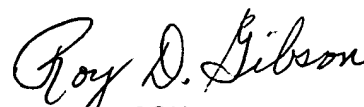
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Henry M. Johnson, III
Patent Examiner
Art Unit 3739


ROY D. GIBSON
PRIMARY EXAMINER